

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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IN RE: NATIONAL PRESCRIPTION : MDL No. 2804
OPIATE LITIGATION :
: Case No. 1:17-md-2804
: Cleveland, Ohio
:
:
: Thursday, December 20, 2018
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TRANSCRIPT OF A TELECONFERENCE MOTION HEARING
HELD BEFORE THE HONORABLE DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

Court Reporter: Lance A. Boardman, RDR, CRR
United States District Court
801 West Superior Avenue
Court Reporters 7-189
Cleveland, Ohio 44113
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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

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3 Gillian Feiner, Assistant Massachusetts Attorney General
4

5 For the Purdue Defendants:

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8 Special Masters:

9 Catherine A. Yanni
10 David Rosenblum Cohen
11 Francis E. McGovern, II

12 Also Present:

13 Katherine King, Courtroom Deputy
14 Mary Hughes, Law Clerk
15 Andrew Scott Loge, Law Clerk
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04:18:40 1 (Proceedings commenced at 12:03 p.m.)

09:09:01 2 THE COURT: This is a hearing in the opioid
12:03:02 3 MDL, 1:17-md-2804. It's a hearing on Purdue's emergency
12:03:11 4 motion that was filed late last night.

12:03:13 5 Who do we have present for Purdue?

12:03:16 6 MR. CHEFFO: Your Honor, it's Mark Cheffo and
12:03:20 7 Sheila Birnbaum.

12:03:21 8 MS. BIRNBAUM: Good morning, Your Honor.

12:03:23 9 THE COURT: Good morning, Mark and Sheila.

12:03:26 10 And who do we have for the Massachusetts AG's office?

12:03:29 11 MS. FEINER: Good afternoon, Your Honor. This
12:03:31 12 is Gillian Feiner from the Massachusetts AG's office.

12:03:38 13 THE COURT: All right. I know there have been
12:03:46 14 some developments since the motion was filed, but as best as
12:03:49 15 I can determine, Purdue's filed a motion to dismiss the
12:03:58 16 allegations in the Massachusetts state case against the
12:04:01 17 individual defendants. And in response, Massachusetts
12:04:09 18 sought leave to amend its complaint to add a lot of details
12:04:14 19 against the individual defendants, including many members of
12:04:19 20 the Sackler family.

12:04:20 21 Purdue believes that the amended complaint contains a
12:04:27 22 large number, I think the reference was more than 800
12:04:35 23 statements that are drawn directly from confidential
12:04:39 24 documents produced in the MDL.

12:04:43 25 And Massachusetts received those documents from a --

12:04:50 1 by way of a court order, and only those individuals or
12:04:57 2 entities that signed an acknowledgement of the protective
12:05:00 3 order and agreed to abide by its terms could get those
12:05:04 4 documents. And Massachusetts signed that acknowledgement.

12:05:09 5 And that order provides a fairly detailed protocol
12:05:13 6 that if an entity or a party receiving confidential
12:05:19 7 documents wants to use them, disclose them publicly, and
12:05:26 8 believes that they have been misclassified, they notify the
12:05:33 9 producing party, in this case that would be Purdue. And
12:05:37 10 there's a one-week period and then there's a second week for
12:05:40 11 discussion. And after the two weeks, if the parties are
12:05:43 12 unable to work it out, then they submit the issue to the
12:05:46 13 Court and that there's no public disclosure until then.

12:05:50 14 So I understand that the state judge, Judge Janet
12:05:57 15 Sanders, a justice of the Superior Court of Massachusetts,
12:06:04 16 has directed Massachusetts to submit to her proposed amended
12:06:13 17 complaint and also the proposed amended complaint in
12:06:18 18 redacted form, redacting any statements that are drawn from
12:06:23 19 confidential documents. And Massachusetts is to submit
12:06:26 20 those two documents to Judge Sanders today. And Judge
12:06:30 21 Sanders is holding a hearing tomorrow, Friday, at 9:30 a.m.,
12:06:37 22 to decide what to do.

12:06:44 23 So the thrust of Purdue's motion is that the state of
12:06:48 24 Massachusetts needs to comply with the terms of my
12:06:50 25 protective order and I should enforce those terms.

12:06:55 1 So have I made any material misstatements in my short
12:07:00 2 summary that anyone wants to correct?

12:07:03 3 MS. FEINER: I think you've been generally
12:07:06 4 accurate, Your Honor. This is Gillian from Massachusetts.

12:07:10 5 I think that's generally a fair statement.

12:07:14 6 MR. CHEFFO: And, Your Honor, this is Mark. I
12:07:16 7 agree. I think you, as usual, got to the point.

12:07:19 8 THE COURT: Well, I'm sure I -- some of the
12:07:22 9 details I haven't covered, but I got the essence.

12:07:26 10 All right. So I guess, Gillian, I'd like to hear from
12:07:33 11 you as to what you propose to do.

12:07:37 12 MS. FEINER: Well, we certainly appreciate
12:07:39 13 that you've turned your attention to this so quickly. We
12:07:42 14 obviously haven't had an opportunity to brief any opposition
12:07:45 15 because the emergency motion was filed last night. I think
12:07:47 16 that there are a few points that we'd like to make.

12:07:52 17 And you're correct that we do have an order from our
12:07:56 18 state court judge to file -- to submit to her a redacted
12:08:00 19 version of the complaint and an unredacted version for her
12:08:06 20 review.

12:08:06 21 I guess our first position, Your Honor, is that
12:08:09 22 there's really no emergency here. The state court order
12:08:12 23 doesn't call for us to do anything that impairs Purdue's
12:08:15 24 rights or conflicts with the MDL protective order. It
12:08:18 25 simply calls for us to submit to her the redacted complaint

12:08:22 1 and unredacted one for in camera review and for the
12:08:26 2 defendants to file motions to impound and related affidavits
12:08:29 3 to the extent that they wish to preserve their
12:08:31 4 confidentiality designations. The process isn't really very
12:08:36 5 different from what's contemplated by the MDL protective
12:08:40 6 order.

12:08:40 7 The second point that I'd like to make is that Purdue
12:08:43 8 agreed to a state court protective order that expressly
12:08:46 9 states that materials the Commonwealth obtained pursuant to
12:08:49 10 paragraph 33L of the MDL protective order are governed by
12:08:54 11 the state court's order. I would observe that that seems to
12:08:56 12 be consistent generally with the spirit and the content of
12:09:00 13 the protocol for state and federal court coordination that
12:09:03 14 Your Honor entered a few months ago.

12:09:06 15 Section 4C of that protocol provides that state court
12:09:11 16 plaintiffs do not consent to jurisdiction by the MDL court
12:09:14 17 for their state court cases except as to issues concerning
12:09:17 18 the enforcement of the terms of the MDL protective order and
12:09:20 19 only until such time as the state court enters its own
12:09:26 20 governing protective order.

12:09:27 21 That happened here. We were not hiding the ball. The
12:09:29 22 protective order that we obtained in Massachusetts was a
12:09:31 23 heavily negotiated document. And in the joint motion that
12:09:35 24 Purdue signed and actually submitted and the protective
12:09:41 25 order itself, paragraph 33L of the MDL protective order is

12:09:44 1 specifically referenced.

12:09:45 2 So we feel that we've been very transparent with
12:09:49 3 Purdue.

12:09:49 4 Another point that I'd like to make, Your Honor, is
12:09:52 5 that our state court judge, Judge Sanders, she set up a
12:09:57 6 reasonable process for handling the confidentiality issues.
12:09:59 7 She's given Purdue and the other defendants the opportunity
12:10:02 8 to establish good cause if they wish to preserve any of the
12:10:06 9 redactions at issue.

12:10:08 10 I'd like to note for the Court that we've made real
12:10:12 11 strides at narrowing the issues with the other defendants,
12:10:14 12 including the Sacklers. And as a result, we don't -- the
12:10:18 13 Sacklers' counsel have confirmed that they are not going to
12:10:22 14 be filing any motion to impound today.

12:10:25 15 So we are working in good faith with the defendants in
12:10:29 16 this matter, and we think that that's reflected in the
12:10:31 17 agreement that we've been able to reach and the issues we've
12:10:35 18 been able to narrow.

12:10:35 19 I guess, you know, the last kind of major point that
12:10:40 20 I'd like to make for the Court is that I think -- you know,
12:10:45 21 you've seen me in Cleveland a number of times now.
12:10:47 22 Cooperation between the state AGs and the MDL really matters
12:10:52 23 to us. We're heavily invested in the national process.

12:10:55 24 If the way that the process is going to work is that a
12:10:59 25 state AG can't file a redacted complaint in its own state

12:11:02 1 court where there are adequate protections in place for the
12:11:04 2 defendants to which the defendants have themselves agreed,
12:11:07 3 then I'm concerned that that process that we worked so hard
12:11:10 4 to work towards -- and frankly, you know, you've been
12:11:15 5 critical in creating an environment where we can do it by
12:11:18 6 entering these -- the protective order and the protocol,
12:11:21 7 then the process is going to break down. And I think that
12:11:23 8 that would be a shame. I think we're making good progress
12:11:28 9 there.

12:11:29 10 So, you know, I guess ultimately our position is that
12:11:33 11 discovery if used in our state court litigation should be
12:11:35 12 resolved in our state court. We think our judge is totally
12:11:39 13 capable of doing that. And we haven't -- you know, we
12:11:42 14 haven't taken any steps to violate the MDL protective order
12:11:47 15 at all, contrary to some of the assertions made in the
12:11:49 16 emergency motion.

12:11:52 17 We take our obligations seriously. Purdue is going to
12:11:55 18 get a fair opportunity, if it wishes to engage in the
12:11:57 19 process, to seek to preserve its designations.

12:12:01 20 And I think I've probably taken up enough of Your
12:12:04 21 Honor's time, but those are kind of some of the key points.
12:12:09 22 Obviously, you know, if you'd like us to file something in
12:12:11 23 writing, we're happy to do that. But the -- you know, it
12:12:15 24 hasn't been, I think, even just about 12 hours since they
12:12:19 25 filed their brief, so we don't have anything together yet.

12:12:23 1 MR. CHEFFO: Your Honor, may I respond to
12:12:25 2 that?

12:12:25 3 THE COURT: Yes, Mark. Go ahead.

12:12:26 4 MR. CHEFFO: So let me say a few things.

12:12:28 5 I actually agree with some of it, but I really think
12:12:32 6 that's a material mischaracterization of what's going on.

12:12:36 7 I think as Ms. Feiner said -- and we, you know, have
12:12:38 8 worked well with her and other AGs. And I think we're not
12:12:41 9 in the business of making lots of emergency motions.

12:12:45 10 So we don't think this is just as simple and a
12:12:48 11 nonissue. We clearly don't think this is an interference
12:12:50 12 with anything -- and I think what you need to understand
12:12:54 13 what you're not getting are kind of -- it's a little bit of
12:12:57 14 a gotcha and a bait and switch here, what's going on.

12:12:59 15 So it is true that there is a protective order in the
12:13:00 16 state court. We think it's consistent with this. It's also
12:13:04 17 true -- and counsel say, well, you know, if there was an
12:13:07 18 existing order, then somehow the MDL provisions don't apply.

12:13:11 19 She signed this acknowledgement -- Ms. Feiner signed
12:13:16 20 this acknowledgement in the month of November. And Pete
12:13:19 21 Weinberger did what he's supposed to: He sent us a note
12:13:22 22 saying it's been signed. You've read the language. It's
12:13:24 23 pretty specific. It says, you know, I solemnly promise that
12:13:26 24 I will not disclose in any manner any information or item
12:13:29 25 that's subject to the protective order to any person or

12:13:31 1 entity except in strict compliance with the provisions of
12:13:34 2 this protective order.

12:13:36 3 So that has to mean something. That was signed just a
12:13:38 4 month or so ago.

12:13:39 5 And here's the problem where I think you're not
12:13:41 6 getting the whole story here. If counsel is basically
12:13:44 7 saying, well, you know, don't interfere with the state court
12:13:47 8 and this is -- they're similar provisions. But that's not
12:13:51 9 true because -- and obviously the state court judge can do
12:13:54 10 whatever she wants. We're not looking to get this court to
12:13:57 11 interfere with the practice.

12:13:59 12 And in fact, what happened initially, just because I
12:14:02 13 think it's important, there were documents produced directly
12:14:04 14 to the state AG, right? Then they filed a 79-page
12:14:10 15 complaint. That's not what this is about, right? That's
12:14:12 16 already been on file. They then said that they want to
12:14:15 17 amend their complaint. They then didn't tell us that they
12:14:17 18 were going to be using any of these documents.

12:14:19 19 They came on December 13 with a 279-page complaint,
12:14:26 20 relying on over 800 MDL documents, and said, oh, by the way,
12:14:33 21 here's what we're going to file.

12:14:34 22 Now, what you didn't hear is that they actually agreed
12:14:36 23 to make a joint impoundment motion to the state, basically
12:14:40 24 saying we want to file this under seal. Right? As I
12:14:46 25 understand it.

12:14:46 1 And, you know, the Court then -- again, which is the
12:14:49 2 state Court's prerogative -- she basically said, you know,
12:14:51 3 for whatever reason, I'm not, you know, kind of a fan of
12:14:54 4 having these under seal. And I want you to now make a
12:15:00 5 showing as to these, all these. All right. That was
12:15:04 6 December 13.

12:15:04 7 So part of the issue, as counsel said, as Ms. Feiner
12:15:07 8 said, we all -- we actually had people working literally all
12:15:10 9 night last night. We sent them a list of, you know, some of
12:15:13 10 the things that we will be designating, looking at them.

12:15:16 11 So part of what I asked Ms. Feiner three times, right,
12:15:19 12 in writing and two phone calls, was we're not saying --
12:15:22 13 we're not looking to claw back these documents. We're not
12:15:25 14 saying they can't be used in joint depositions. We're not
12:15:28 15 saying you can't ask us discovery for them. We're not
12:15:31 16 saying that they shouldn't be used.

12:15:32 17 Really all we're saying, Your Honor, is you can't
12:15:35 18 basically just take a 279 completely hyperbolic over-the-top
12:15:40 19 complaint that reads more like a press release than a
12:15:42 20 complaint and just file it and say -- because the burden is
12:15:47 21 very different. It's very different in state court.

12:15:49 22 And I think what the state court and what the
12:15:51 23 protective order contemplates is that if you get documents
12:15:53 24 in the MDL, right, and we're going to -- we could do this
12:15:56 25 very expeditiously. If they have challenges to

12:15:59 1 confidentiality, we'll address those. Either Special Master
12:16:03 2 Yanni or David Cohen or anyone that you assign will then
12:16:07 3 call balls and strikes, or Your Honor. And then the
12:16:10 4 procedures about filing and impoundment are governed by the
12:16:15 5 state court.

12:16:16 6 What we're basically saying is what you can't do. We
12:16:20 7 think it would be wholly inappropriate, it would blow this
12:16:22 8 entire MDL up, and the protective order, if somebody could
12:16:25 9 go and just get -- we've produced 45 million pages of
12:16:27 10 documents. Take all of those, give us a complaint on a
12:16:30 11 week's notice and say, all the provisions from the
12:16:33 12 protective order somehow don't apply --

12:16:37 13 And one footnote, Your Honor, too, just to understand
12:16:39 14 this, right? We agree that the lawyers for other
12:16:42 15 municipalities should get this. We're not looking to
12:16:45 16 create -- it's good for us, it's good for the system, it's
12:16:47 17 good for the MDL.

12:16:48 18 But as the Court knows, the discovery that was
12:16:50 19 produced into the MDL frankly is far broader than I think
12:16:54 20 would be required in any state, right? And there's a reason
12:16:57 21 for that: Because you have a thousand and plus
12:17:00 22 municipalities across the entire country.

12:17:02 23 But the reason why that makes sense is that at least
12:17:05 24 there's some protections in place that if someone tries to
12:17:08 25 do what the state or Ms. Feiner is doing, we could actually

12:17:11 1 say, well, wait a minute, you know, here's some protections.

12:17:15 2 So all we're asking for, Your Honor, is that it can't
12:17:18 3 be that you could sign something, you can go and take this
12:17:21 4 stuff to state court, you could pretend like all of the
12:17:24 5 protective order doesn't apply, we have to rush and file
12:17:27 6 emergency motions on literally a moment's notice in
12:17:32 7 Christmas week.

12:17:32 8 You know, so what we're asking for is two things, Your
12:17:35 9 Honor, is that -- and the last thing I'll say is, there
12:17:37 10 really -- you know, counsel's saying there's no emergency?
12:17:40 11 I guess I would agree. What's the emergency that they --
12:17:43 12 and I said, why don't we go jointly to the judge and
12:17:46 13 let's -- in state court? Let's ask for a week adjournment
12:17:49 14 so we could -- they refused to do that.

12:17:51 15 There is no emergency why someone needs to file a
12:17:56 16 279-page amended complaint a week before Christmas, you
12:18:00 17 know, without giving us any notice.

12:18:02 18 So our ask, and then I'll stop, Your Honor, is we
12:18:04 19 think the protective order means something. We want to have
12:18:08 20 the AG have access to appropriate documents, or I think all
12:18:11 21 the documents. And we want an opportunity to try and work
12:18:14 22 with her and her colleagues. And if there are any
12:18:16 23 allegations here that they think they need to make or use
12:18:20 24 for jurisdictional purposes, we want to talk to them about
12:18:23 25 that.

12:18:24 1 I think the vast majority of these are -- again, are
12:18:27 2 outside the scope. And hopefully we can come to an
12:18:30 3 agreement or at least now -- and I do agree -- I'll stop by
12:18:33 4 saying I do agree with Ms. Feiner that I think just within
12:18:36 5 the last half hour we sent, you know, a lot of stuff to them
12:18:39 6 saying we have no problem with this, we have no problem with
12:18:41 7 that. And the reason why some of the lawyers for the
12:18:44 8 individuals have it -- are also working cooperatively.

12:18:48 9 So we just need a little time to try and work it out.
12:18:50 10 If it turns out that there's a handful or more of documents
12:18:53 11 that we think should still be maintained as confidential --

12:18:56 12 And as a footnote also, they attached, I believe,
12:19:01 13 2,000 documents to a complaint, 2,000 pages of documents,
12:19:04 14 which I've never, frankly, seen in 30 years of practice. So
12:19:09 15 this goes far beyond interfering with a state court. This
12:19:12 16 is an unprecedented effort to really try and embarrass a lot
12:19:17 17 of these individual people. And unless they have some
12:19:19 18 relief now in a week or so to kind of stop this and try and
12:19:22 19 work through and cooler minds prevail, we're going to be
12:19:26 20 irreparably harmed, Your Honor.

12:19:29 21 MS. FEINER: Your Honor, if I may just respond
12:19:31 22 for a moment.

12:19:32 23 I mean, we have an amendment as of right -- I think
12:19:35 24 what Purdue is really asking for is an opportunity to edit
12:19:39 25 our amended complaint, and we just don't feel that under any

12:19:43 1 circumstances that that is an appropriate ask.

12:19:48 2 I guess I would also just --

12:19:51 3 THE COURT: Well, wait. I -- no one's -- the
12:19:55 4 Massachusetts AG can file whatever complaint she wants. The
12:20:00 5 issue is what can be disclosed publicly now.

12:20:03 6 MS. FEINER: We totally agree with you, Your
12:20:05 7 Honor.

12:20:06 8 THE COURT: No one can control, I can't and
12:20:10 9 Purdue can't control what the chief law enforcement officer
12:20:15 10 of Massachusetts, what cases she seeks to bring and how she
12:20:20 11 characterizes those cases. No one has the power to do that,
12:20:23 12 so no one's going to do that.

12:20:28 13 MS. FEINER: Thank you, Your Honor.

12:20:29 14 I mean, we have at every step assured Purdue, I think,
12:20:33 15 that what we would be filing would be consistent with our
12:20:39 16 obligations under the protective order. And that means that
12:20:43 17 all of the references to materials that they've designated
12:20:47 18 confidential or highly confidential and which are now
12:20:49 19 governed by our state's protective order has been redacted.

12:20:54 20 But at the end of the day, just as they would have to
12:20:57 21 do in your court, also under our state -- under our state's
12:21:02 22 protective order, they have to substantiate their legal
12:21:05 23 basis for many of those redactions. That's just their
12:21:11 24 burden.

12:21:11 25 And they don't like the timing of how it's worked out.

12:21:15 1 And I understand that. But really all we're proposing to
12:21:20 2 file and all we proposed to file last week in front of our
12:21:23 3 court and all we've been discussing with them when we filed
12:21:26 4 our joint motion to impound was a redacted version of our
12:21:32 5 amended complaint for public inspection and a provisionally
12:21:37 6 impounded unredacted version so that our court could make
12:21:42 7 assessments about the propriety of their designations.

12:21:47 8 MR. CHEFFO: See, that's a problem because
12:21:49 9 that's just not -- that's not the way -- because counsel
12:21:52 10 knows -- and again, we have a good -- I don't want to be
12:21:54 11 pejorative or anything, but the reason why they're pushing
12:21:57 12 this is because the judge -- what you're not hearing, Your
12:21:59 13 Honor, is the judge has basically said, we have a different
12:22:02 14 standard. Right? You basically have to show that it's a
12:22:06 15 trade secret, and it's a different standard. She said, I'm
12:22:10 16 not inclined.

12:22:10 17 So what Ms. Feiner knows is that we're going to get
12:22:13 18 there on Friday, and basically there's a very good
12:22:15 19 likelihood that the judge will apply a different standard
12:22:17 20 not knowing all of this.

12:22:18 21 And what you're not -- what I think Your Honor hit the
12:22:21 22 nail on the head here is that they -- we didn't force them
12:22:24 23 to take these documents, right? They could have served
12:22:26 24 discovery. They basically said, we want -- we want to
12:22:29 25 sidetrack that. We want access to 45 million pages, and

12:22:32 1 we're going to play by the rules.

12:22:34 2 And the rules require that this discussion of whether
12:22:37 3 something is protected or not get played out under the
12:22:42 4 auspices of Your Honor's Court because it's Your Honor that
12:22:46 5 we produce these documents under. It's --

12:22:48 6 THE COURT: All right. I understand -- this
12:22:53 7 is a -- this is a very delicate subject, but this is how I
12:22:56 8 come out:

12:22:59 9 If Judge Sanders wants to review in camera the
12:23:04 10 unredacted version, she has every right to do that. But
12:23:13 11 it's ultimately my control over whether confidential
12:23:18 12 documents that started in the MDL and that were produced to
12:23:25 13 other parties pursuant to my order can be made public. So
12:23:29 14 everyone has to follow the protocol that was set up in the
12:23:32 15 protective order that I signed and I issued. And the
12:23:36 16 parties are doing that. They just haven't finished.

12:23:40 17 So until they've finished, that unredacted version
12:23:46 18 cannot be filed. I'm not going to permit Massachusetts to
12:23:49 19 file it publicly. Judge Sanders, of course, can review it,
12:23:55 20 but Massachusetts can't file it publicly until this process
12:23:59 21 is over.

12:24:00 22 And I understand the Sacklers apparently don't have
12:24:07 23 any objection to any of the -- any of the redacted portions.
12:24:12 24 And Purdue has withdrawn its objection to a lot, and they're
12:24:15 25 still going through the process.

12:24:17 1 And it's not an unlimited -- you know, there's a
12:24:20 2 specific timetable that started, and it has another -- well,
12:24:23 3 I don't know, about another week and a half to go. And then
12:24:27 4 if there's still some dispute, then it's going to go to
12:24:33 5 Special Master Cohen and/or Yanni to resolve. And
12:24:36 6 ultimately, if the parties still disagree, then it will go
12:24:39 7 to me and I'll call it and that will be it.

12:24:41 8 So I think that's -- I want the parties to continue to
12:24:48 9 do exactly what they're doing. And when that process is
12:24:52 10 over, then ultimately there will be a document filed in
12:24:57 11 public in Massachusetts.

12:25:01 12 And this process will be over the first part of
12:25:03 13 January, and hopefully there won't be any disagreement. If
12:25:08 14 there is, we've got the protocol that establishes it.

12:25:13 15 And I really can't tell for sure if the Massachusetts
12:25:17 16 protective order is the same or different than mine. And
12:25:24 17 when I issued that protective order, I made it clear that I
12:25:28 18 would -- there would be uniform rules over the use of those
12:25:33 19 confidential documents. And I think that's the only way to
12:25:37 20 do it is if I make sure that everyone follows the protocol.

12:25:42 21 So that's what we're doing, and I'll issue an order
12:25:48 22 accordingly. And if at the end of this short period there
12:25:53 23 still is disagreement between the state of Massachusetts and
12:25:57 24 Purdue over disclosure of confidential documents, then
12:26:01 25 present that very succinctly to Special Masters Cohen and

12:26:08 1 Yanni and they'll make a decision. And again, if someone
12:26:12 2 disagrees with that, they can appeal it to me.

12:26:15 3 MR. CHEFFO: Thank you, Your Honor.

12:26:16 4 THE COURT: All right?

12:26:17 5 MS. FEINER: Thank you, Your Honor.

12:26:18 6 Can I just ask for one sort of clarification? Because
12:26:22 7 I want to make sure that I'm complying with everybody today.

12:26:26 8 THE COURT: Right.

12:26:27 9 MS. FEINER: Our current plan, and I think
12:26:29 10 it's consistent with what you just outlined, is to file a
12:26:36 11 totally sort of redacted version of the complaint, redacting
12:26:39 12 all of the designated information, and at the same time to
12:26:47 13 submit to Judge Sanders a provisionally impounded version
12:26:50 14 for her review.

12:26:55 15 THE COURT: Well, I mean, I don't know what
12:26:56 16 "provisionally impounded" means, Gillian. If she wants to
12:27:00 17 see it -- she wants to see it, she's a judge, she can see
12:27:02 18 it. But you make clear that it -- you may not and will not
12:27:07 19 be filing that until the conclusion of the process that was
12:27:15 20 set up in my protective order and that you and Purdue are
12:27:18 21 actively engaged in that process now. And the end of that
12:27:27 22 process will be the filing of an unredacted document. Or
12:27:34 23 there may be a couple redactions. I don't know. It will be
12:27:38 24 a largely unredacted document --

12:27:40 25 MS. FEINER: Great.

12:27:41 1 THE COURT: -- at the end of that process.

12:27:43 2 MS. FEINER: Okay.

12:27:44 3 THE COURT: And AG Healey will be the one
12:27:47 4 filing it. But you're not going to be filing anything more
12:27:50 5 until that process is concluded.

12:27:54 6 MS. FEINER: Right. So I am within your order
12:28:00 7 if I file a redacted version of the complaint today?

12:28:04 8 THE COURT: Right. But you've got to make
12:28:05 9 sure that you tell Judge Sanders that that document can't go
12:28:13 10 anywhere but to her office.

12:28:14 11 MS. FEINER: You mean the unredacted one?

12:28:15 12 THE COURT: The unredacted one.

12:28:17 13 MS. FEINER: Correct.

12:28:19 14 THE COURT: Right.

12:28:19 15 MS. FEINER: I fully understand that.

12:28:20 16 And, Your Honor, just for the record --

12:28:22 17 THE COURT: I assume, Mr. Cheffo, you're not
12:28:27 18 objecting to the file of the redacted complaint. Is that
12:28:29 19 right?

12:28:29 20 MR. CHEFFO: No, Your Honor, I'm not. I think
12:28:32 21 that we -- you know, we take at good faith that the
12:28:35 22 redaction -- I mean, I haven't gotten -- pored through it,
12:28:38 23 but, you know, again, I take at good faith that Gillian will
12:28:41 24 redact the issues that are in dispute, and we'll work, as
12:28:44 25 you said, in good faith.

12:28:44 1 So if they feel like they need to do that, again, I
12:28:47 2 don't want to micromanage how they're going to handle it.
12:28:49 3 One way might be to jointly call up the judge and basically
12:28:51 4 just say can we -- you know, we've now had this and the
12:28:54 5 intervention of the Court and some instruction, can we do
12:28:57 6 that. I'm not sure what the point is, but again, if
12:28:59 7 Ms. Feiner feels like she needs to file something, then I
12:29:04 8 don't object to a redacted version.

12:29:05 9 THE COURT: All right. Well, again, that's
12:29:07 10 strictly up to the Massachusetts AG. I mean, she's the
12:29:11 11 chief law enforcement officer of the state, and it's not for
12:29:13 12 me to tell her what to do or not to do in terms of filing
12:29:17 13 that.

12:29:18 14 But I'm not prohibiting you, Gillian, in any way from
12:29:24 15 filing the redacted version if that's what you want.

12:29:27 16 MS. FEINER: Thank you very much, Your Honor.
12:29:28 17 We really appreciate your time and your focus on this.

12:29:31 18 THE COURT: All right. Well, that's my -- I'm
12:29:34 19 on this 24/7. If anyone doubted that, I think I've
12:29:41 20 demonstrated it.

12:29:41 21 MR. FEINER: That makes two of us.

12:29:41 22 MR. CHEFFO: We never doubted it. But we
12:29:43 23 thank you, Your Honor.

12:29:44 24 And thank you, Ms. Feiner.

12:29:45 25 MS. FEINER: Thank you.

12:29:46 1 THE COURT: All right. Good holidays to
12:29:47 2 everyone.

12:29:47 3 MS. FEINER: You as well.

12:29:48 4 MR. CHEFFO: Thanks.

12:29:52 5 (Proceedings adjourned at 12:29 p.m.)

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7 **C E R T I F I C A T E**

8
9 I certify that the foregoing is a correct transcript
10 of the record of proceedings in the above-entitled matter
11 prepared from my stenotype notes.

12

13 /s/ Lance A. Boardman 12/20/2018
14 Lance A. Boardman, RDR, CRR DATE

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